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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/765,244 10/30/97 SEIBEL

P 8484-018-999

HM22/0117

PENNIE & EDMONDS  
1155 AVENUE OF THE AMERICAS  
NEW YORK NY 10036

EXAMINER

LACOURCIERE, K

ART UNIT

PAPER NUMBER

1635

DATE MAILED:

01/17/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

08/765,244

Applicant(s)

Selbel

Examiner

Karen A. Lacourciere

Group Art Unit

1635

☒ Responsive to communication(s) filed on Jan 5, 2001

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claim

☒ Claim(s) 1, 25, 37, and 82 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1, 25, 37, and 82 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☒ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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***Continued Prosecution Application***

The request filed on 01-05-01 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 08/765,244 is acceptable and a CPA has been established. An action on the CPA follows.

Applicant should note, the amendment filed 01-05-01 states in the Remarks section that claims 1, 25, and 82 are pending in the instant case, however, claim 37 was not canceled and, therefore, claims 1, 25, 37 and 82 are pending.

***Specification***

The objections to the specification set forth in the prior Office action (mailed 07-05-00) are maintained.

An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence of the specification (37 CFR 1.78).

The specification as filed does not contain a specific reference to the prior application(s) in the first sentence of the specification (37 CFR 1.78), nor does it contain an abstract of the disclosure as required by 37 CFR 1.72(b) on a separate sheet.

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This application contains sequence disclosures that are encompassed by the definitions for nucleotide and/or amino acid sequences set forth in 37 CFR 1.821(a)(1) and (a)(2). However, this application fails to comply with the requirements of 37 CFR 1.821 through 1.825 because there are amino acid and nucleotide sequences disclosed in the text of the specification which are not identified using the appropriate SEQ ID NO: #.

It is noted that the substitute specification submitted 04-05-00 does contain both the required priority statement and abstract and does reference sequences by SEQ ID NO: #, however, the substitute specification has not been entered, as stated in the prior Office action (mailed 07-05-00), and, as such, the objections made to the specification in the prior Office actions (mailed 07-05-00) based on the priority statement, abstract, Table of Contents, Summary of Invention and sequence references are maintained.

### ***Drawings***

Applicant is required to submit a proposed drawing correction for figure 6b, to correct the objection noted in the prior Office action (mailed 10-05-99). However, formal correction of the noted defect has been deferred until the application is allowed by the examiner.

### ***Claim Rejections - 35 USC § 112***

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The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 82 are maintained as rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention for the reasons of record set forth in the prior Office action (mailed 07-05-00). Applicants have not provided any arguments pertaining to the rejection of record.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 25, 37 and 82 are maintained as rejected under 35 U.S.C. 112, first paragraph, for the reasons of record set forth in the prior Office action (mailed 07-05-00). Applicants have not provided any arguments pertaining to the rejection of record.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1 and 82 are maintained as rejected under 35 U.S.C. 102(b) as being anticipated by Vestweber et al. for the reasons of record set forth in the prior Office action (mailed 07-05-00). Applicants have not provided any arguments pertaining to the rejection of record.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 25 and 37 are maintained as rejected under 35 U.S.C. 103(a) as being unpatentable over Vestweber et al. in view of Williams et al. further in view of Latham et al. for the reasons of record set forth in the prior Office action (mailed 07-05-00). Applicants have not provided any arguments pertaining to the rejection of record.

***Conclusion***

This is a continuation of applicant's earlier Application No. 08/765,244. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected

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on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Karen A. Lacourciere at telephone number (703)308-7523.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John LeGuyader can be reached at (703) 308-0447. The fax phone number for this Group is (703) 308-4242.

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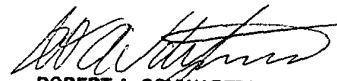
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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Karen A. Lacourciere

January 12, 2001

  
ROBERT A. SCHWARTZMAN  
PRIMARY EXAMINER